

Statement  
of  
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Before the  
Senate Committee on Commerce, Science and Transportation

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Thank you for the opportunity to provide the views of the Department of State on the Export Administration Act ("EAA"). We welcome the Congress' interest in revising and updating the now lapsed EAA. The Administration has worked extensively with various committees to address our concerns with the draft legislation. We stand ready to work with the Congress as a whole to develop legislation that carefully and properly balances our goals of protecting U.S. national security and foreign policy interests while supporting U.S. economic leadership and assuring the security of the U.S. and its friends and allies. At every step of this process, we feel that the dialogue between the Congress and the Administration has been constructive and open-minded, which will undoubtedly result in a better final bill.

Let me start by emphasizing that the State Department fully recognizes that U.S. exports, particularly in high-technology fields, are important not only to the prosperity of the American people, but also to the national security and foreign policy of the United States. In an environment where our defense and foreign policy resources are stretched to the limit, we rely upon the innovative and productive capacity of the U.S. economy to provide new and more efficient tools to ensure a decisive technological advantage over our potential adversaries. Much of the innovation upon which we rely comes from private sector efforts to develop new products and systems for commercial purposes. Export performance is a key factor in U.S. industry's ability to grow and invest in these new technologies.

However, with U.S. technological leadership also comes a great responsibility. Just as the U.S. military derives great benefit from dual-use technologies, so can our adversaries, particularly those countries that are attempting to develop weapons of mass destruction, missile systems and advanced conventional weapons.

Export controls, therefore, are a balancing act, or more appropriately, an exercise in risk management. The only way

to be sure that the transfer of U.S. technology cannot threaten our interests would be to stop all exports of high-technology goods. That would be just as disastrous as having no controls over such goods. The only sensible alternative is to maintain an export control system that encourages exports while providing the capability to fulfill our international nonproliferation obligations and to prevent dangerous technology transfers.

We in government have well-defined responsibilities and authorities aimed at ensuring that trade is conducted in a manner that promotes U.S. foreign policy objectives and national security interests. We also have an obligation to exporters of dual-use goods and technology to create an environment that does not unnecessarily hinder industry's ability to compete in the global marketplace. Accordingly, our comments on the shape of the new EAA are directed at crafting a bill that appropriately reaches this balance.

Any revision to the EAA should ensure that we retain strong curbs to combat the proliferation of weapons of mass destruction and their means of delivery, the accumulation of destabilizing advanced conventional weapons, and the export of items useful for terrorists.

A major responsibility of the State Department in this process is to ensure that any legislation will allow us to continue to exert leadership and to fulfill our obligations in the multilateral export control regimes. At the same time, the new EAA must allow us the flexibility to impose unilateral controls on items to achieve critical U.S. foreign policy goals. Provisions in the new EAA - particularly those that provide exemptions to controls - need to be carefully considered with these interests in mind. Before focusing on provisions of particular interest to State, I would like to say a bit more about our participation in multilateral regimes.

### **Multilateral Regimes**

Broadly speaking, U.S. objectives in multilateral regimes are the same as our export control policy as a whole -- balance economic considerations with the national security requirement to prevent the proliferation of dangerous military technologies, particularly those related to weapons of mass destruction, missiles, and advanced conventional weapons. All agencies share these objectives.

Specific U.S. objectives regarding the Nuclear Suppliers Group, the Australia Group, the Missile Technology Control Regime, and the Wassenaar Arrangement are developed through interagency working groups involving all relevant agencies, including the Intelligence Community. The Department of State chairs these groups and is responsible for attempting to reconcile interagency positions and resolve conflicting points of view. If necessary, disputes are escalated through the NSC process.

State generally leads the U.S. delegations to these multilateral regime meetings. The delegations generally include all interested agencies and, on occasion, representatives of U.S. industry as well.

All the multilateral export control regimes work by consensus. Any changes require the acquiescence of all participating states. This can, of course, be a cumbersome process. While all participants in the multilateral regimes have agreed to the basic underlying principles that the regimes embody, there are often serious differences on specific issues. Progress often involves significant diplomatic efforts not only on the part of our delegations at the meetings but also our embassies and Washington officials from all relevant agencies.

Above all, it should be recognized that participation in the multilateral regimes is in the national security interest of the U.S. Any legislation on export controls needs to provide this and future Administrations with the flexibility to

negotiate strong export controls on a multilateral basis. Although unilateral controls are sometimes necessary, we agree strongly with the assertion that multilateral controls are preferable. If legislation prevents us from adhering strictly to these international agreements, these regimes will cease to be viable, cutting off our main avenues for achieving effective multilateral controls.

Therefore, we must be mindful of the interrelationship between our domestic controls and multilateral objectives. If we do not maintain credible domestic controls on dual-use technologies, or if our domestic legislation or unilateral actions appear to give competitive advantages to our exporters, our regime partners will not be receptive to U.S. proposals to strengthen multilateral controls. In short, maintaining multilateral discipline and cooperation is essential to both our nonproliferation and commercial interests.

### **Provisions of the EAA**

With that background in mind, I'd like to mention some of the general provisions that might be a part of a new EAA. In particular, any new legislation needs to avoid provisions that:

inadvertently weaken existing multilateral regimes and hamper our ability to encourage other countries to adopt stringent export controls; or

unduly restrict our ability to implement foreign policy controls or are duplicative of existing sanctions authority.

With those criteria in mind, State has followed the progress of a number of key aspects of the draft EAA, including:

Penalty provisions

Mass Market and Foreign Availability provisions

Exceptions to Foreign Policy Controls

Definition of State's role

Sanctions provisions

We look forward to continuing to work with the Congress on these and other issues in this important legislation.

### **Conclusion**

The State Department appreciates Congressional efforts to undertake a thorough review of this extremely complex subject and produce a new EAA. Export controls not only have an effect on the health of the American economy – they have a global impact in that they are in many ways the cornerstone of our nonproliferation and arms control efforts. As we move further into an era in which the lines between military and civilian goods grow increasingly blurred, it is important that our export controls balance the need of American enterprises to compete overseas on an equal footing with the need to protect present and emerging national security interests.

The Department of State welcomes the opportunity to work with the Committee on this complex, but essential, task.

